

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Advanced Television Systems and)
their Impact Upon the Existing)
Television Broadcast Service)

MB Docket No. 87-268

MAILED

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SEVENTH REPORT AND ORDER
AND
EIGHTH FURTHER NOTICE OF PROPOSED RULE MAKING

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By the Commission:

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I. INTRODUCTION

1. In this *Seventh Report and Order*, the Commission adopts a new Table of Allotments for digital television (“DTV”) providing all eligible stations with channels for DTV operations after the DTV transition on February 17, 2009. The new DTV Table accommodates all eligible broadcasters, reflects to the extent possible the channel elections made by broadcasters, and is consistent with efficient spectrum use. The new DTV Table finalizes the channels and facilities necessary to complete the digital transition

and ultimately will replace the existing DTV Table¹ at the end of the DTV transition. The existing DTV Table continues to govern stations' DTV operations until the end of the DTV transition.

2. The new DTV Table is the result of informed decisions made by eligible licensees and permittees during the Commission's channel election process. As the Commission stated in the *Seventh Further Notice of Proposed Rule Making* in this proceeding,² in developing these final DTV allotments the Commission has attempted to accommodate broadcasters' channel preferences as well as their replication and maximization service area certifications (made via FCC Form 381). The DTV Table adopted herein reflects consideration of the comments filed in response to the *Seventh Further Notice* as well as our efforts to promote overall spectrum efficiency and ensure that broadcasters provide the best possible service to the public.

3. In early 2006, Congress established February 17, 2009 as a new hard deadline for the end of the DTV transition and the end of analog transmissions by full power television broadcasters.³ In view of the short period of time remaining before this deadline, our goal has been to finalize DTV channels and facilities as expeditiously as possible to provide stations with the certainty they need to complete their digital build out, consistent with the interference and other standards set forth in the *Seventh Further Notice*.

4. In addition, we are adopting a Further Notice of Proposed Rule Making ("*Eighth Further Notice*"), to announce tentative channel designations ("TCDs") for three new permittees that have recently attained permittee status. The *Eighth Further Notice* identifies these permittees together with the channel we propose to assign the permittee and the specific technical facilities at which we propose to allow these stations to operate after the DTV transition. If adopted, this information would revise the DTV Table and Appendix B adopted in this *Seventh Report and Order*. We invite public comment on these proposed new TCDs and associated technical facilities.

5. In addition, the *Eighth Further Notice* identifies a number of proposals for revisions to the proposed DTV Table and/or Appendix B that were advanced by commenters in either reply comments or late-filed comments in response to the *Seventh Further Notice*.⁴ As these comments propose changes to the DTV Table and/or Appendix B that could affect other stations that may not have had adequate notice of these proposals, we identify these proposals to give affected stations an opportunity to comment.

II. BACKGROUND

A. The DTV Transition

6. The Commission established the existing DTV Table in the 1997 *Sixth Report and Order*

¹ The post-transition DTV Table will be codified at 47 C.F.R. § 73.622(i). See Appendix A. The current DTV Table, which is contained in 47 C.F.R. § 73.622(b), will become obsolete at the end of all authorized pre-transition DTV operations. The current NTSC Table, which is contained in 47 C.F.R. § 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease. We will address any rule amendments necessitated by the end of analog service in a later proceeding.

² *Seventh Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 21 FCC Rcd 12100 (2006) ("*Seventh Further Notice*").

³ See Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)).

⁴ Appendix B reflects the revisions adopted in this Order. The additions and modifications proposed in the *Eighth Further Notice* are not included in Appendix B, but are separately listed in Appendix G. Stations that would be affected by the proposed changes are shown with their current facilities, which would duly change if the proposed modifications are adopted in the future Eighth Report and Order.

as part of its DTV transition plan.⁵ In creating the existing DTV Table, the Commission sought to accommodate all eligible, full-service broadcasters with a second 6 MHz channel to provide DTV service in addition to their existing analog service.⁶ In addition, the Commission initiated a process by which the amount of spectrum devoted to the television broadcast service will eventually be reduced to a “core spectrum” (i.e., channels 2-51) after the end of the transition, enabling the recovery of a total of 108 MHz of spectrum (i.e., channels 52-69).⁷ This “out of core” spectrum has been made available for public safety and wireless communications services.⁸

B. The Channel Election Process and Proposed New DTV Table of Allotments

7. Broadcast licensees selected their ultimate (i.e. post-transition) DTV channel inside the core spectrum through a channel election process established by the Commission in the *Report and Order* in the Second DTV Periodic proceeding.⁹ Under this process, licensees elected their preferred post-transition channel during one of three rounds. Channel elections that could be approved, as well as “best available” channels where appropriate, were locked in as tentative channel designations (“TCDs”) and protected against new interference from subsequent channel elections with a strong presumption that a station’s TCD would be its channel assignment proposed in the new DTV Table.¹⁰ In order to facilitate the channel election process and the development of a final, post-transition DTV Table, the Media Bureau

⁵ *Sixth Report and Order, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 14588 (1997) (“*Sixth Report and Order*”), on recon., *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998) (“*Sixth MO&O*”), on further recon., *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998) (“*Second MO&O on Reconsideration*”). See also 47 C.F.R. § 73.622(b). The details of each station’s channel assignment under the existing DTV Table, including technical facilities and predicted service and interference information, were set forth in the initial Appendix B of the *Sixth Report and Order* (“initial Appendix B”). See *Sixth Report and Order*, 12 FCC Rcd at 14693, app. B. The initial Appendix B was amended in 1998. See *Sixth MO&O*, 13 FCC Rcd 7418 (1998) and *Second MO&O on Reconsideration*, 14 FCC Rcd 1348 (1998). Simultaneously with the adoption of the *Sixth Report and Order*, the Commission announced DTV channel assignments for eligible licensees in the *Fifth Report and Order* in the same docket. See *Fifth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 12809, 12892, App. E (1997) (“*Fifth Report and Order*”).

⁶ Eligibility to receive a second channel for DTV operations was limited to existing broadcasters. See 47 U.S.C. § 336(a)(1). See also *Fifth Report and Order*, 12 FCC Rcd at 12838, ¶ 69.

⁷ See *Sixth MO&O*, 13 FCC Rcd at 7431, ¶ 41 (determining that the core TV spectrum after the transition would encompass television channels 2 through 51).

⁸ Channels 60-69 were reallocated for public safety and wireless communications services in 1998. See *Report and Order, Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, 12 FCC Rcd 22953 (1998). Channels 52-59 were reallocated for new wireless services in 2001. See *Report and Order, Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, 17 FCC Rcd 1022 (2002). See also *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-72 (rel. Apr. 27, 2007) (addressing rules governing wireless licenses in the 700 MHz Band); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, adopted July 31, 2007.

⁹ *Report and Order, In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket 03-15, 19 FCC Rcd 18279 (2004) (“*Second DTV Periodic Report and Order*”)(recons. pending).

¹⁰ *Id.* at 18298, ¶ 46 n.96.

announced a freeze on the filing of certain NTSC and DTV requests for allotment or service area changes.¹¹

8. The first step of the channel election process addressed preliminary matters and required all licensees to file a certification (via FCC Form 381) in order to define their post-transition facility.¹² In these certifications, licensees had to decide whether they would (1) replicate their allotted DTV facilities, (2) maximize to their currently authorized DTV facilities,¹³ or (3) reduce to a currently authorized smaller DTV facility.

9. The second step of the channel election process was the first round of channel elections, in which only in-core licensees – those with at least one in-core channel – could participate. In-core licensees that participated in round one filed their channel elections (via FCC Form 382) by February 10, 2005. First-round electors were not permitted to elect a channel that was not assigned to them unless rights to that channel were obtained through a negotiated channel agreement (“NCA”) with another licensee. At the close of the first round elections, the Commission announced 1,554 TCDs,¹⁴ which included channels elected through 25 NCAs.¹⁵

10. In the third step, the Commission analyzed the interference conflicts arising out of the first round and offered licensees an opportunity to resolve them (via FCC Form 383). After reviewing the

¹¹ See Public Notice, “Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes,” 19 FCC Rcd 14810, 14810-11 (MB 2004) (“*August 2004 Filing Freeze PN*”). The freeze was imposed on August 3, 2004, prior to the commencement of the channel election process, in order to provide a stable database for developing the post-transition DTV Table. The freeze precludes parties from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. The freeze does not prevent the processing of pending applications. See *id.* See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538. In the *Second DTV Periodic Report and Order*, the Commission noted that it would continue to process rulemakings in which a Notice of Proposed Rulemaking (“NPRM”) had been issued prior to the adoption of the *Second DTV Periodic Report and Order*, but ordered the dismissal of all pending petitions to change the NTSC Table of Allotments (“NTSC Table”) in which a NPRM had not yet been issued. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18308, ¶ 68.

¹² Licensees were required to file their certifications (via FCC Form 381) by November 5, 2004. See Public Notice, “DTV Channel Election Information and Deadlines,” 19 FCC Rcd 19569 (MB 2004) (“*Certification Deadline PN*”). Stations that did not submit certification forms by the deadline were evaluated based on replication facilities. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18296, ¶ 41.

¹³ Many stations have applied for and been granted authorization to operate at facilities that are different from the facilities that were specified for their operation in the initial DTV Table and Appendix B, as amended in 1998. In most cases, the facilities allowed under these new authorizations allow stations to “maximize” their service coverage to reach a larger population than the facilities specified in the initial DTV Table and Appendix B.

¹⁴ Public Notice, “DTV Tentative Channel Designations for 1,554 Stations Participating in the First Round of DTV Channel Elections,” 20 FCC Rcd 10983 (MB 2005).

¹⁵ By Order released on June 8, 2005, the Media Bureau approved 25 NCAs for the first round and rejected 12 NCAs, sending those 12 licensees to their contingent round one election or, if necessary, to round two. *Negotiated Channel Election Arrangements*, MM Docket No. 03-15, Report and Order, 20 FCC Rcd 10141, 10142 (MB 2005) (“*Round One NCA Order*”).

first round conflicts, the Commission announced an additional 159 TCDs, bringing the total number of TCDs to 1,713.¹⁶

11. The fourth step of the channel election process was the second round of elections, in which the remaining licensees made their elections. Licensees that participated in this round filed their channel elections (via FCC Form 384) by October 31, 2005.

12. In the fifth step, the Commission analyzed the interference conflicts arising out of the second-round elections and announced 75 TCDs, which included channels elected through two NCAs.¹⁷ The Commission subsequently announced the consolidated total of first- and second-round TCDs to be 1,789.¹⁸

13. The sixth step of the channel election process was the third and final round of elections, in which licensees without a TCD after rounds one and two, as well as certain other eligible licensees,¹⁹ filed a final channel election preference.²⁰ Licensees that participated in the third round filed their channel elections (via FCC Form 386) by May 26, 2006. At the close of the third round, the Commission announced 20 TCDs for eligible licensees.²¹ The four eligible stations without a TCD after the third round were awarded a TCD in the *Seventh Further Notice*.²²

14. In early 2006, while the channel election process was underway, Congress enacted significant statutory changes relating to the DTV transition. Most importantly, the DTV Act established February 17, 2009 as the new hard deadline for the end of the DTV transition and the end of analog transmissions by full power stations.²³ The DTV Act does not provide for waivers or extensions of this

¹⁶ Public Notice, "Tentative Digital Channel Designations for Stations Participating in the First Round of DTV Channel Elections and Second Round Election Filing Deadline," 20 FCC Rcd 15735 (MB 2005) ("*First Round TCD PN*").

¹⁷ Public Notice, "Tentative Digital Channel Designations for Stations Participating in the Second Round of DTV Channel Elections and Third Round Election Filing Deadline," DA 06-991 at 2-4 (MB rel. May 5, 2006) ("*Second Round TCD PN*"). The Commission received two NCAs: one for Philadelphia, Pennsylvania and the other for San Francisco, California. The Commission approved the Philadelphia NCA in full, and the San Francisco NCA in part.

¹⁸ Public Notice, "Tentative Digital Channel Designations for Stations Participating in the First and Second Rounds of the DTV Channel Election Process," DA 06-1082 (MB rel. May 23, 2006). One additional first round TCD was announced in addition to the 75 second round TCDs.

¹⁹ Licensees with a TCD were eligible to seek an alternative designation in the third round if they received a TCD for a low-VHF channel (channels 2-6) or if their TCD was subject to international coordination issues which the Commission has been unable to resolve with the Canadian and Mexican governments. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18306, ¶ 63.

²⁰ In the third round, we received seven channel elections from stations that did not have a TCD, 14 from stations that had a low-VHF TCD, and one from a station that had an international coordination issue.

²¹ Public Notice, "Third Round of the DTV Channel Election Process: Tentative Channel Designations," 21 FCC Rcd 9572 (MB 2006) ("*Third Round TCD PN*").

²² These four stations are: WABC-TV (New York, New York), WEDH-TV (Hartford, Connecticut), KTFK-TV (Stockton, California), and KVIE-TV (Sacramento, California).

²³ Section 3002(a) of the DTV Act amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as the hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A). DTV Act § 3002(b) directs the Commission to "take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and (continued....)

deadline for cessation of analog broadcasts.²⁴ The DTV Act also requires full power broadcast licensees to cease operations outside the core spectrum after February 17, 2009 in order to make that spectrum available for public safety and commercial wireless users.²⁵ Full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital at the end of the transition on February 17, 2009.²⁶

15. On April 25, 2007, the Commission initiated the Third DTV Periodic Review proceeding.²⁷ The Commission sought comment on a range of proposals intended to ensure that broadcasters complete construction of their final, post-transition (digital) facilities by the February 17, 2009 statutory deadline for completion of the digital transition. Among other things, the Commission tentatively concluded that February 17, 2009 will be the construction deadline for stations that are building digital facilities based on their new channel allotments determined in this *Report and Order*.²⁸ For these stations, whose pre-transition DTV channel is different from their post-transition DTV channel, the Commission proposed not to require further construction of the station's pre-transition DTV channel.²⁹ For stations with a post-transition channel the same as their pre-transition DTV channel, the Commission proposed to require construction be completed six months from the release date of the

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36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive)." 47 U.S.C.A. § 309 Note.

²⁴ Congress originally established a flexible deadline of December 31, 2006 for completing the digital transition, which allowed for exceptions to the deadline. Specifically, prior to the DTV Act, the former 47 U.S.C. § 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline if the Commission determined that less than 85 percent of the television households in a licensee's market were capable of receiving the signals of DTV broadcast stations through various means (i.e., via over-the-air reception, cable or satellite, or digital-to-analog conversion technology). 47 U.S.C. § 309(j)(14)(B)(iii) (2005). In the DTV Act, Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85 percent benchmark for DTV reception.

²⁵ See 47 U.S.C. § 337(e)(1).

²⁶ *Id.*

²⁷ *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, FCC 07-70 (rel. May 18, 2007) ("*Third DTV Periodic Review NPRM*"). Comments are due by August 8, 2007, and replies by August 23, 2007. Public Notice, "Media Bureau Announces Comment and Reply Comment Dates for the Third DTV Periodic Review NPRM," MB Docket No. 07-91, DA 07-3073 (2007).

²⁸ See *Third DTV Periodic Review NPRM* at ¶ 60. Stations whose pre-transition DTV channel is different from their post-transition channel will be required to file an application for a construction permit for their post-transition channel following adoption of this *Report and Order* and once the standards and procedures for processing such applications are finalized in the Report and Order in the Third DTV Periodic Review proceeding.

²⁹ *Id.* at ¶ 61. The Commission noted that this approach, if adopted, would change the Commission's previous policy regarding interference protection on the post-transition channel. *Id.* at ¶ 62-63. In 2004, the Commission established two deadlines by which stations were expected to either replicate or maximize DTV service on their current (pre-transition) DTV channel or lose interference protection to the unserved areas on that channel. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-18319, ¶¶ 72-87. By July 1, 2005, top-four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. If these stations will move to another channel post-transition, they were required to serve at least 100 percent of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they will remain on their current DTV channel after the transition. If they will move to another channel post-transition, they were required to serve at least 80 percent of their replication service population by July 1, 2006. *Id.* at 18314-18315, ¶ 78. The Commission stated that stations that met the applicable "use-or-lose" deadline and that are going to move to a different channel after the transition would be permitted to carry over their authorized maximized areas to their new channels. *Id.* at 18317-18318, ¶¶ 85-86.

Construction Deadline Extension Order and Use or Lose Order, or November 18, 2007.³⁰ The Commission also made a number of proposals regarding the procedures and standards applicants must follow in filing applications for facilities specified in the final DTV Table and Appendix B.³¹

C. Allotment Methodology and Evaluation of Interference Conflicts

16. In the *Second DTV Periodic Report and Order*, the Commission stated that channel elections would be evaluated after each channel election round in order to identify potential interference conflicts. Interference conflicts were found to exist only where licensees elected channels other than their current DTV channel (e.g., most often when stations elected their NTSC channels).³²

17. In developing the proposed DTV Table and Appendix B (which proposed channel assignments, operating facilities, and service information for individual stations), engineering evaluations were generated using computer analysis to determine station service coverage and interference. These evaluations were based on the technical standards and methods set forth in Sections 73.622(e) and 73.623(c) of the Commission's rules, which (1) define the geographic service area of DTV stations, and (2) provide interference technical criteria for modification of DTV allotments included in the initial DTV Table.³³ Specifically, Section 73.622(e) defines a DTV station's service area as the geographic area within the station's noise-limited F(50,90) contour where its signal is predicted to exceed the noise-limited service level.³⁴ A station's noise-limited contour is computed using its actual transmitter location, effective radiated power ("ERP"), antenna height above average terrain ("antenna HAAT"), and antenna radiation pattern. Section 73.623(c) sets forth the thresholds of desired-to-undesired (D/U) ratio at which interference is considered to occur.

18. Calculations related to service coverage and interference were based on the terrain-dependent Longley-Rice point-to-point propagation model for predicting the geographic areas and populations served by stations.³⁵ Interference resulting from co-channel and first adjacent channel relationships were examined in accordance with the interference criteria for DTV allotments specified in Section 73.623(c).³⁶

³⁰ See *Order, In the Matter of DTV Build-Out, Applications Requesting Extension of the Digital Television Construction Deadline*, FCC 07-91, adopted May 17, 2007 ("Construction Deadline Extension Order"); *Order, In the Matter of DTV Build-Out, Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines, Requests for Waiver of the August 4, 2005 "Checklist" Deadline*, FCC 07-90, adopted May 17, 2007 ("Use or Lose Order"). Stations with a pending construction permit that extends beyond this deadline have until the date specified on their permit to complete construction.

³¹ See *Third DTV Periodic Review NPRM* at ¶¶ 92-96.

³² It was not necessary to determine the amount of interference caused by stations that elected their current DTV channel because operation on those channels would not result in new interference.

³³ See 47 C.F.R. §§ 73.622(e), 73.623(c).

³⁴ 47 C.F.R. § 73.622(e). The F(50,90) designator indicates that a specified field strength necessary for the provision of DTV service is expected to be available at 50 percent of the locations 90 percent of the time. *Id.*

³⁵ See 47 C.F.R. §§ 73.622(c) and 73.623(c); See also OET Bulletin No. 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," (Feb. 6, 2004) ("OET Bulletin No. 69"), available at www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf. Under the procedure in *OET Bulletin No. 69*, the predicted geographic area and population served by a TV station are reduced by any interference it receives from other stations.

³⁶ The computer software used in this work is similar to that used in performing the service coverage and interference evaluations for the initial DTV Table adopted in the *Sixth Report and Order* and that the Media Bureau has used to evaluate requests for modification of DTV facilities and changes in channel allotments in the initial DTV (continued....)

19. Channel election analysis relied upon a database composed of TV station authorizations to which licensees certified as of November 5, 2004 (the "certification database"), including both analog and digital stations.³⁷ During the channel election process, the Commission performed interference-conflict analyses in two circumstances: (1) where a station elected a channel that was different from its current DTV channel, and (2) to identify a "best available" channel.³⁸ Values for the ERP and the directional antenna radiation pattern were calculated to allow a station to match its coverage area based on its maximized or replication facilities as certified.³⁹ Here, new interference to post-transition DTV operations was considered interference beyond that caused by existing analog and DTV operations (as set forth in the certification database information). Service coverage and interference conflicts were based only on the populations determined to be receiving service and new interference.⁴⁰

20. In the *Second DTV Periodic Report and Order*, the Commission recognized that a special accommodation was necessary if a station with an out-of-core DTV channel elected to operate its post-transition DTV station on its in-core analog channel.⁴¹ The Commission stated that the 0.1 percent additional interference limit could be exceeded on a limited basis in order to afford these stations an improved opportunity to select their own NTSC channel. The Commission indicated that such allowance is justified because these licensees have only one in-core option available (*i.e.*, their NTSC channel) and may need this additional accommodation to be able to operate on their in-core channel after the end of the transition.⁴² Stations that were eligible to participate in the channel election process and that had either an

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Table. This software provides analysis of service coverage and interference on both a cumulative and individual-station basis.

³⁷ The certification database was made available in tables attached to the Public Notice, "DTV Channel Election Information and First Round Election Filing Deadline," 19 FCC Rcd 24141 (MB 2004). This database was used to determine and evaluate: existing DTV service populations; existing interference; and new interference. The Commission stated that this data best reflect current service to viewers while preserving the service areas of currently operational DTV stations. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18294, ¶ 37.

³⁸ See ¶ 22, *infra*, for a discussion of the process by which "best available" channels were determined.

³⁹ Calculations of new ERP and antenna patterns for stations' elected channels were performed in the same manner as those performed by the Commission to match DTV facilities to analog facilities; see *Sixth Report and Order*, 12 FCC Rcd at 14693, app. B. For the purpose of these calculations, an interference conflict was found when it was predicted that more than 0.1 percent new interference would be caused to another station. That is, new interference was considered to constitute a conflict when that new interference affected more than 0.1 percent of the population predicted to be served by the station in the absence of that new interference. Population data from the year 2000 census was used. See *Seventh Further Notice*, 21 FCC Rcd at 12107, ¶ 21; see also, *Second DTV Periodic Report and Order*, 19 FCC Rcd 18294, 18302-03, ¶¶ 37-38, 56.

⁴⁰ See *Seventh Further Notice* at 12107, ¶ 21. See also, *Second DTV Periodic Report and Order*, 19 FCC Rcd 18294, 18302-03, ¶¶ 37-38, 56.

⁴¹ The Commission's goal was to facilitate a station's election of its in-core analog channel if the station did not have an in-core DTV channel. To this end, the Commission recognized that the interference relationships between DTV-to-DTV and NTSC-to-DTV operations are such that a DTV station serving the same geographic area as its associated analog station would have a 1 dB greater interference impact on a co-channel DTV station than it would have had as an analog station and an 8 dB greater impact on an adjacent channel DTV station than it would have had as an analog station, assuming the same coverage and locations for all stations. Thus, DTV operation on a station's analog channel could result in new interference. Unlike a station that has its DTV channel inside the core, and therefore could avoid this new interference by electing its in-core DTV channel, a station with an out-of-core DTV channel by definition could not elect its DTV channel for post-transition use. A station that did not have an in-core analog channel could not make use of this special accommodation. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302-03, ¶ 56.

⁴² *Id.*

out-of-core DTV channel or no DTV channel (*i.e.*, a singleton with only an in-core analog channel) were permitted to select their in-core NTSC channel for post-transition DTV operation if it would cause no more than 2.0 percent new interference to a protected DTV station.⁴³ Any such stations that certified to their maximized facilities, however, would be permitted to use the 2.0 percent standard only to the extent that the predicted new interference also would not exceed the amount of interference that would have been caused by replication facilities.⁴⁴ Where post-transition use of its NTSC channel by such a station was predicted to cause interference to a protected station in excess of 2.0 percent of the protected station's population coverage, the electing station was then made subject to the normal conflict-resolution procedures.⁴⁵

21. Where a station in round one or round two elected and received a TCD for a DTV channel that was not its current NTSC or DTV channel, the interference potential of that new channel was included in the service coverage and interference evaluations of subsequent elections. That is, new channels elected and tentatively designated in round one under approved NCAs⁴⁶ were included in the service coverage and interference evaluations of channels elected in rounds two and three. Similarly, channels elected and tentatively designated in round two were included in the service coverage and interference evaluations in round three.

22. In cases where the licensee requested, or was given, a Commission-determined "best available" channel for its station, an ordered approach was used, as follows. First, the station's possible post-transition operation on each in-core channel was analyzed, including the interference impact and service coverage based on the station's certified facilities. If there was a channel or channels where the station could operate without causing new interference to another station and provide adequate service, it was given a TCD on that channel. If there was more than one such channel, it was given the lowest channel that was outside of the low-VHF band. In cases where there was no channel that would allow the station to satisfy these criteria when operating at its certified maximized facilities, the station's possible post-transition operation on each in-core channel at its replication facilities was examined, and then a channel that would result in the minimum amount of new interference to protected stations was selected. In these cases, the objective was to achieve a balance that would minimize the amount of interference that the subject station would cause to and receive from other stations. In every "best available" channel determination, the interference that other stations would receive from the TCD was less than 2.0 percent.

23. Because the final channel allotments can be established only through a rulemaking proceeding, the Commission proposed the new DTV Table as an amendment to Section 73.622 in the *Seventh Further Notice* in this proceeding, which was released October 20, 2006.⁴⁷ The proposed DTV Table included a channel for each then-eligible broadcast television station, set forth in the proposed rules and Appendix A to the *Seventh Further Notice*. The specific technical facilities – ERP, antenna HAAT, antenna radiation pattern, and geographic coordinates at which stations would be allowed to operate –

⁴³ See Public Notice, "DTV Channel Election: First Round Conflict Decision Extension and Guidelines For Interference Conflict Analysis," 20 FCC Rcd 13415 (MB 2005); *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18301-04, ¶ 44, 53-57 (describing conflict analysis).

⁴⁴ *Id.*

⁴⁵ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302-03, ¶ 56.

⁴⁶ *Id.* at 18297-98, ¶ 45 (describing NCAs).

⁴⁷ The *Seventh Further Notice* established January 11, 2007 as the deadline for filing comments and February 12, 2007 as the deadline for filing reply comments. In an *Order* released January 9, 2007, the Media Bureau extended these filing deadlines to January 25, 2007 for comments and February 26, 2007 for reply comments. See *Order Granting Extension of Time for Filing Comments and Reply Comments*, MB Docket 87-268, 22 FCC Rcd 188 (MB 2007).

were set forth in Appendix B, as proposed, to the *Seventh Further Notice*. The proposed Appendix B also included information on service area and population coverage.⁴⁸

24. The Commission noted that additional pending applications might be granted before an order finalizing the new DTV Table was adopted and stated that, to the extent possible, it would accommodate future new permittees in the proposed new DTV Table.⁴⁹ Accordingly, the Media Bureau issued a related Public Notice announcing TCDs for six new permittees.⁵⁰

25. We received more than 200 comments and reply comments in response to the *Seventh Further Notice*. The vast majority of these comments request specific changes to the proposed DTV Table and/or proposed Appendix B facilities. In general, our goal in reviewing these comments was to accommodate the requests made by commenters to the extent possible consistent with the standards outlined in the *Seventh Further Notice*, and particularly the 0.1 percent interference standard. We adopted this approach in an effort to expedite finalization of the DTV Table and Appendix B so that stations can complete construction of their post-transition facilities by the statutory deadline for the DTV transition. As we emphasized in the *Third DTV Periodic Review NPRM*, this statutory deadline is fast approaching and the Commission has no discretion to waive or change this transition date. Full-power television broadcast stations not ready to commence digital operation upon expiration of the deadline for the transition on February 17, 2009 must go dark and risk losing their authorizations to operate after the transition date.⁵¹

26. In view of the importance of finalizing post-transition DTV channels and facilities to permit stations to complete their DTV build-out, the Commission reviewed the comments to determine whether the requests for changes were consistent with the standards outlined in the *Seventh Further Notice*.⁵² Where the proposed changes to the DTV Table and/or Appendix B are consistent and do not create new post-transition interference to a TCD of more than 0.1 percent, the request is granted. Where the interference standard is not met, and the affected station(s) do not agree to accept the interference, in general we deny the requested change except in limited circumstances. In addition, in circumstances where commenters requested changes prematurely or requested changes that should properly be considered in connection with an application for a construction permit or a modification of construction permit to build a facility identified in the new Table, we deny the request to change the DTV Table and/or Appendix B and direct that these requests be filed following adoption of this *Report and Order* and the *Report and Order* in the Third DTV Periodic Review proceeding.⁵³

III. SEVENTH REPORT AND ORDER

A. General Issues

27. Most of the comments and reply comments filed in response to the *Seventh Further*

⁴⁸ See *Seventh Further Notice*, 21 FCC Rcd at 12149, Appendix B.

⁴⁹ *Id.* at 12118.

⁵⁰ Public Notice, "Revisions to Proposed New DTV Table of Allotments, Tentative Channel Designations To Be Added to the DTV Table of Allotments Proposed in the *Seventh Further Notice of Proposed Rule Making* in MB Docket No. 87-268," 22 FCC Rcd 102 (MB 2007) ("*New Permittees Public Notice*").

⁵¹ See *Third DTV Periodic Review NPRM* at ¶ 16. See also *supra* ¶ 14.

⁵² We considered late-filed comments and requests initially raised in reply comments where these comments and requests request minor adjustments or do not cause impermissible interference to other stations. Where late-filed comments request more significant changes that may affect other stations, we raise these comments and requests for comment in the *Eighth Further Notice* herein.

⁵³ See Section III.F.2, *infra*.

Notice pertained to individual station situations and are discussed in detail, below, and are grouped by the nature of the request. However, several commenters raised general issues and the Association for Maximum Service Television, Inc. ("MSTV") discussed these general observations in their reply comments. We begin by addressing these observations and general comments.

1. Request to add references to pending applications

28. First, we deny the request of NBC Telemundo and MSTV that we include references to pending applications in the DTV Table so that the facilities will be described in the event the application is granted.⁵⁴ We decline to add uncertain parameters to the Table or Appendix B. Rather, we are adjusting the Table and Appendix B where appropriate in this proceeding in response to specific requests filed pursuant to the *Seventh Further Notice*. In paragraph 28 of the *Seventh Further Notice*, stations were invited to propose modifications to their facilities as certified and described on Appendix B in order to match their authorized or constructed facilities insofar as they differ from their certified facilities. This situation would occur where a modification application was granted in the interim between certification on FCC Form 381 in 2004 and this proceeding.⁵⁵ For example, as listed below in the discussion of Requests to Make Changes to Certification, NBC Telemundo requested that we revise the parameters for their KDEN-DT facility in Longmont, Colorado to reflect their modified facility.⁵⁶ Appendix B, as adopted, will reflect these and other changes requested in response to the *Seventh Further Notice*.

2. Request for a procedure for correcting "minor variances"

29. On a related topic, we deny the request of MSTV and Pappas for a procedure for correcting "minor variances between authorized facilities and built-out facilities."⁵⁷ These comments were filed before the Commission adopted the *Third DTV Periodic Review NPRM* in which we proposed the procedures for filing and reviewing the applications necessary for stations to construct their post-transition facilities.⁵⁸ We expect that the issues raised by MSTV and Pappas with regard to simplifying procedures for resolving minor differences between the facilities authorized by the Commission and the technical requirements associated with constructing the facilities will be raised and addressed in the Third DTV Periodic Report and Order. Similarly, Pappas expressed concern regarding the difficulty of duplicating the directional pattern designed for a VHF antenna with a UHF directional antenna for stations changing from VHF to UHF channels.⁵⁹ We appreciate Pappas' general concern as well as their specific request associated with their station, KUNO-DT in Fort Bragg, California. As described in greater detail below, these issues will be addressed at the application stage when stations will submit the precise parameters they propose to use to construct the facilities in the DTV Table and Appendix B.⁶⁰

3. Methodology issues

30. We find that the concerns raised by Cohen, Dippell and Everist ("CDE") about the methodology used to develop the DTV Table are without merit. CDE submitted comments questioning

⁵⁴ See Reply Comments of Association for Maximum Service Television, Inc. ("MSTV"), filed Feb. 26, 2007, at 2; Comments of NBC Telemundo License Co., filed Jan. 25, 2007, at 4-5.

⁵⁵ See *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶¶28-29; see also, *Third DTV Periodic Review NPRM* at ¶¶92-93.

⁵⁶ See, *infra*, Appendix D2.

⁵⁷ See Reply Comments of MSTV at 3; Comments of Pappas Entities, filed Jan. 25, 2007, at 3.

⁵⁸ See *Third DTV Periodic Review NPRM* at ¶¶92-93.

⁵⁹ See Comments of Pappas Entities at 3-4.

⁶⁰ See, *infra*, Section III.F.2, discussion of proposed application process in "Speculative Requests to Change Appendix B Facilities." See also *Third DTV Periodic Review NPRM* at ¶¶92-93.

the methodology used to determine service replication.⁶¹ MSTV's reply comments noted that they had not evaluated CDE's comments but encouraged the Commission to correct any software errors in the event CDE's concerns were valid.⁶² We have carefully evaluated CDE comments and find that, contrary to CDE's understanding of our service replication methodology, where the Commission determined a station's ERP value, we did not calculate the reference antenna patterns for stations based on terrain data for only 8 radials at 45-degree spacings. As we indicated in the description of our methodology in Appendix B, our calculation was based on 360 uniformly spaced radials. While we do not understand how CDE arrived at this misunderstanding, we clarify here that our software does not interpolate terrain heights for radials between the 8 "cardinal" radials but in fact uses the actual terrain data for each of the 360 one-degree radials. Accordingly, we will not accept an applicant's request to substitute an ERP and reference antenna pattern that are calculated using a methodology that differs from that used in preparing Appendix B.

4. Use of the 0.1 percent interference standard

31. We reject Bluestone License Holdings ("Bluestone") challenge to the use of the 0.1 percent interference standard in establishing post-transition operations. Bluestone questioned the Commission's use of the 0.1 percent standard for new interference in developing the post-transition DTV Table through the channel election process.⁶³ Bluestone contends that the interference standard was inconsistent with other standards used by the Commission in other contexts. As MSTV points out in their reply comments, the 0.1 percent standard, as adopted in the *Second DTV Periodic Report and Order*, was appropriate for the channel election process, which was establishing post-transition operations.⁶⁴ The Commission determined that, in the context of the channel election process, interference conflict would constitute an impermissible violation of a station's responsibility to protect other stations if new interference exceeded 0.1 percent. The 2.0 percent standard, in contrast, was appropriate in the context of pre-transition digital operations.⁶⁵ In developing the initial DTV Table, the Commission used the 2.0 percent standard to fit DTV stations in the DTV Table while analog stations were also in operation.⁶⁶ We further note that we have proposed a different standard, 0.5 percent, for DTV-to-DTV interference post transition.⁶⁷ This 0.5 percent standard, if adopted in the Third DTV Periodic Report and Order, would be used to evaluate proposals starting after the establishment of the final post-transition DTV Table.

5. AMTS Licensees' Protection of TV Channels 10 and 13

32. In response to comments filed by Maritime Communications/Land Mobile, LLC ("MC/LM"), we conclude that an Automated Maritime Telecommunications System ("AMTS")⁶⁸ licensee must protect TV broadcast licensees and permittees authorized to operate on channels 10 and 13 during

⁶¹ Comments of Cohen Dippell and Everist, filed Jan. 26, 2007, at 1-3.

⁶² Reply Comments of MSTV at 3.

⁶³ Comments of BlueStone License Holdings Inc. ("BlueStone"), filed Jan. 25, 2007, at 1-2.

⁶⁴ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302-03, ¶ 56; Reply Comments of MSTV at 4; see discussion of 0.1 percent standard, *supra* ¶ 19.

⁶⁵ See *Sixth MO&O*, 13 FCC Rcd at 7450-7451, ¶ 80.

⁶⁶ See Comments of BlueStone at 4.

⁶⁷ See *Third DTV Periodic Review NPRM* at ¶ 104. See also MSTV Reply Comments at 5.

⁶⁸ AMTS is a specialized system of coast stations in the 217/219 MHz band providing "automated, integrated, and interconnected ship-to-shore communications for tugs, barges, and other vessels on waterways." 47 C.F.R. § 80.385. The Commission has auctioned a total of 30 AMTS licenses: 20 in the 2004 Auction 57 and 10 in the 2005 Auction 61, each for a ten-year term.

the DTV transition's channel election process. MC/LM filed comments questioning whether an existing AMTS licensee must protect TV broadcast licensees and permittees moving to channels 10 and 13 as part of the DTV transition's channel election process.⁶⁹ Paging Systems, Inc., ("PSI") and Florida West Coast Public Broadcasting ("Florida West"), licensee of NCE station WEDU in Tampa, FL ("WEDU"), filed reply comments and MSTV filed an *ex parte* on this issue.⁷⁰

33. We agree with MC/LM and PSI, both AMTS licensees,⁷¹ that Section 80.475(a) of the rules governs how AMTS licensees must protect TV broadcast stations.⁷² As acknowledged by both MC/LM and PSI, AMTS applicants must protect broadcast television stations with existing authorizations to operate on TV channels 10 and 13, whether the broadcast television station is providing analog or digital service.⁷³ Based on the new post-transition DTV Table, it appears that very few stations are moving to new allotments in which they may be affected by existing AMTS licensees.⁷⁴ To the extent that any station anticipates a problem with respect to coordination with AMTS service, the station may raise the issue with the Media Bureau.

34. At this time, Florida West, which received a TCD for channel *13 in the proposed DTV Table, is the only licensee that has indicated a potential conflict with AMTS operations.⁷⁵ Florida West requests assurance that its station, WEDU, will be protected with respect to AMTS licensees.⁷⁶ We note that AMTS licensees have had to protect WEDU's predecessor, WTVT, on channel 13 in Tampa,⁷⁷ and

⁶⁹ See Comments of Maritime Communications/Land Mobile, LLC ("MC/LM"), filed Jan. 11, 2007.

⁷⁰ See Reply Comments of Paging Systems, Inc. ("PSI"), filed Feb. 23, 2007; Reply Comments of Florida West Coast Public Broadcasting, Inc. ("Florida West"), filed Feb. 26, 2007; and Association for Maximum Service Television, Inc. ("MSTV") *ex parte* (dated Apr. 11, 2007).

⁷¹ MC/LM obtained its AMTS license in Auction 61. PSI obtained AMTS licenses in both Auction 57 and Auction 61.

⁷² 47 C.F.R. § 80.475(a)(1) provides: "Applicants proposing to locate a coast station transmitter within 169 kilometers (105 miles) of a channel 13 TV station or within 129 kilometers (80 miles) of a channel 10 TV station or with an antenna height greater than 61 meters (200 feet), must submit an engineering study clearly showing the means of avoiding interference with television reception within the grade B contour, see § 80.215(h) of this chapter, unless the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system, or the proposed station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands)." In addition, the rule requires that applications "must give written notice of the filing of such application(s) [sic] to the television stations which may be affected. A list of the notified television stations must be submitted with the subject applications." 47 C.F.R. § 80.475(a)(2). See also 47 C.F.R. § 80.215(h) ("... no harmful interference will be caused to television reception except that TV services authorized subsequent to the filing of the AMTS station application will not be protected.")

⁷³ Comments of MC/LM at 2-3; Reply Comments of PSI at 3.

⁷⁴ Fewer than ten stations have received new DTV allotments on channel 10 or 13 (*i.e.*, the allotment on channel 10 or 13 was not the station's analog channel).

⁷⁵ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A. Florida West is the licensee of station WEDU, channel *3, and of WEDU-DT, channel *54, Tampa, FL. Channel 13 is an existing NTSC channel allotment, 47 C.F.R. § 73.606(b), which was previously held by station WTVT. MSTV also expressed concern and noted that AMTS licensees must not cause harmful interference to authorized analog and DTV stations on channel 10 or 13. Reply Comments of MSTV at 1-3.

⁷⁶ Comments of Florida West at 3 (arguing that "viewers of Station WEDU should not be subjected to adjacent-channel AMTS interference").

⁷⁷ WTVT, Tampa, FL, which currently operates in analog on channel 13, received its DTV channel 12 for its TCD.

must continue to protect that station through the end of the transition. Accordingly, we conclude that post-transition operation by WEDU on channel 13 in Tampa should not raise new interference issues with respect to AMTS licensees in that area, and therefore allot channel 13 to WEDU in the new DTV Table of Allotments. We note, however, that Section 80.475(a)(1) of the Commission's rules applies.⁷⁸

B. Requests for Minor Adjustments

35. We will make a variety of minor adjustments based on requests from commenters. We received comments filed on behalf of 22 stations requesting that we make minor adjustments to the station coordinates specified in the proposed DTV Table Appendix B. We asked licensees to review the accuracy of their information contained in the proposed DTV Table Appendix B and comment on any inaccuracies or discrepancies in this information.⁷⁹ In some cases, the station requested a change to conform to the coordinates reflected on a station authorization and/or the coordinates of the Antenna Structure Registration ("ASR")⁸⁰ for the station's tower.⁸¹ In circumstances where a station submitted a correction to the station's coordinates, the corrected coordinates are specified on a station license or construction permit, and the requested change did not result in a change of more than three seconds latitude or longitude for the station, we are making the requested correction. Accepting corrections to Appendix B of three seconds or less is consistent with the Commission's rules, which do not require a construction permit for such a correction before it can be licensed.⁸² Three seconds of latitude or longitude is approximately 200 to 300 feet. The stations for which we make such a correction are listed in Appendix D1 hereto and the changes requested by those stations are reflected in DTV Table Appendix B adopted herein.

36. We also received comments filed on behalf of stations requesting modification of the proposed DTV Table Appendix B in the *Seventh Further Notice* either to express a station's geographic coordinates in tenths of seconds in addition to the currently listed degrees, minutes, and seconds or to round to the nearest whole second rather than merely truncate the data. One such commenter argued that precision is important as even a small change in location data could have an impact on interference studies in light of the 0.1 percent interference standard.⁸³ We note that a tenth of a second latitude or longitude is equivalent to approximately 10 feet.

37. We find it is appropriate to round to the nearest whole second because the resources necessary to collect more precise data and revise the computer software that generates the Table would not be justified by the small difference in physical location. For those commenters that have requested a correction of their station coordinates and provided us with station coordinates expressed to the tenth of a second, we have revised DTV Table Appendix B to round the coordinates to the nearest whole second. The stations for which such a change is made are included in the list of stations in Appendix D1 herein.

⁷⁸ Pursuant to 47 C.F.R. § 80.475(a)(1), an AMTS licensee is not permitted to apply for a transmitter site that would interfere with an existing TV station.

⁷⁹ *Seventh Further Notice*, 21 FCC Rcd at 12105-6, ¶ 16.

⁸⁰ Part 17 of the FCC's rules sets forth antenna structure registration procedures for antenna structures that pose a potential hazard to aircraft. The registration of an antenna structure that affects air navigation is a pre-condition to FCC licensing of radio facilities at a particular site. See 47 C.F.R. Part 17.

⁸¹ See e.g., Comments of Northern California Public Broadcasting, Inc. (KQED, San Francisco, CA), filed Jan. 25, 2007; Comments of Waitt Broadcasting, Inc. (KMEG, Sioux City, IA), filed Jan. 19, 2007.

⁸² See 47 C.F.R. § 73.1690(b)(2). See also Comments of Pappas Entities, filed Jan. 25, 2007, at 3 (suggesting that the Commission resolve minor variances between facilities as constructed versus facilities as authorized with a procedure modeled after 47 C.F.R. § 73.1690).

⁸³ See Comments of NBC Telemundo License Co., filed Jan. 25, 2007, at 2-3 (KVEA, Corona, CA; KWHY, Los Angeles, CA; and WSCV, Fort Lauderdale, FL).

C. Requests to Make Changes to Certification

38. We are permitting changes to stations' facility certifications (FCC Form 381) based on appropriate demonstrations from these stations where such changes are consistent with the circumstances contemplated in the *Seventh Further Notice*. In paragraph 28 of the *Seventh Further Notice*, the Commission recognized that some stations have already constructed or received authorization to construct facilities on the station's TCD that provide service to areas that extend beyond that to which the station certified on FCC Form 381.⁸⁴ Because the interference protection provided during the channel election process was limited to the facilities to which the station certified in FCC Form 381, the Commission noted that stations serving or authorized to serve areas beyond their certified area could become subject to interference in those areas.⁸⁵ The Commission stated that it would permit stations in this situation to file comments proposing to modify their certified facilities to match their authorized or constructed facilities.⁸⁶ Stations requesting such a change were required either to (1) submit an engineering analysis demonstrating that the proposed change to their certified facilities would not result in interference in excess of 0.1 percent to any licensee's existing TCD or (2) submit the signed, written consent of every affected licensee.⁸⁷ The Commission also stated that stations in these circumstances seeking a change in their certification would be required to accept interference from any channel election already approved.⁸⁸

1. Requests That Meet the Interference Criteria

39. We will permit stations to change their facility certifications (FCC Form 381), and thus our post-transition DTV Table Appendix B, where such stations have demonstrated that such modification of their facilities will conform to licensed or authorized facilities and where the proposed change to the Appendix B facilities either meets the interference criterion discussed above (*i.e.*, the proposed change would not result in interference in excess of 0.1 percent to any licensee's existing TCD) or, as discussed further below, the station affected agreed to accept the interference. We received comments on behalf of 130 stations requesting such changes. We have made the changes requested by these commenters and the changes are reflected in the revised DTV Table Appendix B adopted herein. A list of the stations for which we made these changes is attached hereto in Appendix D2.⁸⁹ To address the requests of those commenters in this group whose stations are moving to a different channel for post-transition service, we recalculated their post-transition DTV coverage area based on their authorized or licensed DTV facility, as indicated by the file number shown in Appendix D2.

40. In some cases, stations listed in Appendix D2 request changes to the DTV Table/Appendix B that differ from the facilities specified in a current authorization for the station on the post-transition channel.⁹⁰ In these circumstances, we have revised DTV Table Appendix B to specify the

⁸⁴ *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶ 28.

⁸⁵ *Id.*

⁸⁶ *Id.* These changes, if approved, would be changes to the facilities reflected on DTV Table Appendix B.

⁸⁷ *Id.* at 12110, ¶ 29.

⁸⁸ *Id.*

⁸⁹ Christian Faith Broadcast, Inc., licensee of WGGN-DT, Sandusky, OH, digital channel 42, is included on Appendix D2 based on its request to reduce power from 1000 kw to 700 kw to avoid causing more than 0.1 percent new interference. See Christian Faith Broadcast, Inc., *ex parte* (dated July 10, 2007), at 2. The licensee should also file an application to modify its CP to match the reduced power.

⁹⁰ WMEI, Arecibo, PR has notified us of their intent to relinquish their construction permit for their pre-transition DTV facility in order to flash cut directly from analog to digital operation. See Public Notice, "DTV Transition – Approval of 'Flash Cut' Requests," 22 FCC Rcd 7581 (MB 2007). Accordingly, we treat WMEI herein as a singleton station, determine replication based on the station's analog facility, and grant WMEI's request to change (continued....)

station's authorized facilities. The following paragraphs describe three situations that merit additional explanation.

41. KBCW, San Francisco, CA. San Francisco Television Station KBCW, Inc. ("KBCW"), licensee of station KBCW, channel 44, and KBCW-DT, channel 45, San Francisco, CA, received channel 45 for its TCD in the proposed DTV Table.⁹¹ In comments filed on behalf of KBCW, CBS Corporation ("CBS") requests a change to conform to the parameters of KBCW's licensed facilities on Channel 45.⁹² CBS states that, along most azimuths, the currently licensed digital facilities of KBCW exceed those resulting from the replication facilities assigned to the station in the proposed DTV Table Appendix B. CBS states that an interference study shows that the requested KBCW parameters would cause in excess of 0.1 percent new interference only to the digital operation of KQCA, Stockton, California. According to CBS, KQCA currently receives 0.46 percent interference from KBCW-DT's presently licensed operation and would continue to do so after the transition if KBCW-DT keeps its existing facilities. CBS submitted an agreement in which KQCA agrees to accept this interference. In light of the interference agreement submitted by CBS, we will accept the requested change to the parameters for KBCW to conform to its authorized and operating facilities. These changes are reflected in the revised DTV Table Appendix B adopted herein.

42. KALO, Honolulu, HI. Pacifica Broadcasting Company ("Pacifica"), licensee of station KALO(TV), channel 38, and KALO-DT, channel *10, Honolulu, HI, received channel 10 for its TCD in the proposed DTV Table.⁹³ In a late-filed comment, Pacifica noted its concern that it may not be able to operate at its applied-for power level on channel 10 because it will cause an unacceptable level of interference to the FCC monitoring station at Waipahu.⁹⁴ To address this anticipated difficulty, Pacifica has proposed a reduced ERP of 14.275 kW.⁹⁵ This power level is less than the authorized power of the facility,⁹⁶ but the reduction is necessary to prevent interference with our nearby monitoring facility. We have studied the proposed power and find that it does not cause impermissible interference to any station. We accept KALO's proposal and the DTV Table Appendix B has been revised accordingly.

43. WPPB, Boca Raton, FL. The School Board of Broward County ("SBBC"), licensee of WPPB-TV, channel *63, and permittee of WPPB-DT, channel *40,⁹⁷ Boca Raton, FL, received channel

(Continued from previous page)

Appendix B to reflect the current WMEI analog transmitter site. See Appendix D2, *infra*; see also Comments of CMCG Puerto Rico License LLC, filed Jan. 25, 2007.

⁹¹ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

⁹² See Comments of CBS Corporation, filed Jan. 25, 2007, at 6-8.

⁹³ See *Seventh Further Notice*, 21 FCC Rcd at 12123 App. A. See also *Report and Order, Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations*, MB Docket No. 04-192, 19 FCC Rcd 23604 (2004) (DA 04-3815, rel'd Dec. 7, 2004) (granting substitution of *10 for *39 and power of 25 kW and HAAT of 577 meters).

⁹⁴ See Pacifica *ex parte* comments (dated July 27, 2007).

⁹⁵ Pacifica also submitted an earlier *ex parte* request to swap post-transition channels with Oceania Christian Church, licensee of station KUPU(TV), ch 56 and KUPU-DT, ch 38, in Waimanalo, HI, but subsequently withdrew this proposal and reverted to its TCD on 10, thus leaving KUPU unchanged. See Pacifica *ex parte* comments (dated July 20, 2007) at 2; and *ex parte* comments (dated July 27, 2007).

⁹⁶ See *Report and Order*, DA 04-3815, 19 FCC Rcd 23604.

⁹⁷ SBBC was originally allotted channel *44 for WPPB-DT, but the Commission approved SBBC's request to substitute channel *40 for *44, see 47 C.F.R. § 73.622(b), and recently affirmed this decision in disposing of an Application for Review (opposing this channel substitution) filed on July 1, 2005 by Sherjan Broadcasting Company, Inc. ("Sherjan"), licensee of Class A station WJAN-CA, Channel 41. See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Boca Raton, Florida)*, MM Docket No. 00- (continued....)

*40 for its TCD in the proposed DTV Table.⁹⁸ In comments filed to this proceeding, SBBC supports the proposed allotment of channel *40, but asks to change its certified facilities and DTV Table Appendix B to reflect facilities authorized by the Commission in 2002.⁹⁹ No other comments were filed related to this TCD.

44. SBBC's request to change WPPB's DTV channel from *44 to *40 was approved in the 2002 *Boca Raton Allotment Order*.¹⁰⁰ In that order, WPPB-DT, channel *40, was authorized to operate at maximized facilities, including an ERP of 1000 kW and an antenna HAAT of 310 m.¹⁰¹ However, SBBC certified in its FCC Form 381¹⁰² for maximized facilities as authorized by its existing construction permit for DTV channel *44.¹⁰³ SBBC explained in its FCC Form 381 that it did this because the channel substitution decision was challenged by a petition for reconsideration and, thus, not deemed "final."¹⁰⁴ In its FCC Form 381, SBBC also stated its intention to certify for maximized facilities at the new channel *40 allotment when the channel substitution became final.¹⁰⁵ SBBC subsequently filed an application in 2006¹⁰⁶ to conform its new DTV channel *40 allotment to those facilities specified in the 2002 *Boca Raton Allotment Order*.

45. The proposed post-transition DTV Table now shows WPPB's new DTV channel *40.¹⁰⁷ We hereby revise DTV Table Appendix B herein to reflect the facilities authorized by the 2002 *Boca Raton Allotment Order*. This change does not result in more than 0.1 percent new interference to any station. WPPB's requested certification change is to facilities expressly authorized to the station in 2002, and the station expressed its intent to certify to these facilities in its Form 381 filing.

(Continued from previous page)

138, RM-9896, 17 FCC Rcd 7114 (MB 2002) ("*Boca Raton Allotment Order*") (approving the substitution of DTV channel *40 for station WPPB-DT's assigned channel *44); Memorandum Opinion and Order, 17 FCC Rcd 23528 (MB 2002) ("*Reconsideration Order*") (dismissing petition for reconsideration and affirming channel substitution); Memorandum Opinion and Order, 20 FCC Rcd 9783 (MB 2005) ("*Further Reconsideration Order*") (dismissing "further" petition for reconsideration and affirming channel substitution); Memorandum Opinion and Order, FCC 07-137, adopted Aug. 1, 2007, not yet released (dismissing application for review and affirming channel substitution).

⁹⁸ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A. SBBC's election of channel *44 was proper because the channel election process permitted a station to elect a channel if an NPRM had been issued with respect to a channel change (as was the case here). See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307-08, ¶ 67 and 18279 (Channel election form 382 provides: "Pending Channel Change Requests. Licensees for which the Commission has issued a Notice of Proposed Rulemaking with respect to a channel change request may elect the new channel proposed in the NPRM.")

⁹⁹ See Comments of The School Board of Broward County ("SBBC"), filed Jan. 25, 2007.

¹⁰⁰ See *Boca Raton Allotment Order*, 17 FCC Rcd at 7116, ¶ 6.

¹⁰¹ *Id.*

¹⁰² See FCC File No. BCERET-20041101AFT (filed Nov. 2, 2004) (WPPB's FCC Form 381, certifying to maximized facilities as authorized by FCC File No. BPEDT-19991028ACM).

¹⁰³ See Comments of SBBC at 1. See also FCC File No. BPEDT-19991028ACM (filed Nov. 6, 2000) (WPPB's construction permit for channel *44, which includes an ERP of 565 kW and an antenna HAAT of 311 m).

¹⁰⁴ See Comments of SBBC at 1.

¹⁰⁵ See *id.* at 1-2.

¹⁰⁶ See FCC File No. BMPEDT-20060705ACF (filed July 6, 2006) (application to modify WPPB-DT's facilities to reflect channel *40 allotment).

¹⁰⁷ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

2. Requests By Operating Stations That Do Not Meet Interference Criteria

46. We will permit stations that are already operating their final, post-transition DTV facilities to change their facility certifications (FCC Form 381), and thus our post-transition DTV Table Appendix B, to reflect those facilities, even though such operations will exceed the 0.1 percent interference standard. Eight stations requested changes to the proposed DTV Table Appendix B to reflect operating facilities where we have determined that the interference caused to the TCD of another licensee exceeds the 0.1 percent interference standard and there is no interference agreement with the affected station(s). In several cases, the Commission granted pending applications for these stations after certification.¹⁰⁸ In other cases, as discussed further below, we have permitted stations to change their certification from replication to maximization, thereby potentially causing more interference to other stations than would have been permitted for the facilities to which the station originally certified.¹⁰⁹

47. While these stations are requesting changes to the parameters proposed in the *Seventh Further Notice* in situations where the level of interference exceeds the relevant standard, we find that they have met their burden of demonstrating that their special circumstances justify a waiver.¹¹⁰ We therefore grant the requested changes. In each case, the changes are being requested for stations that are already operating their final, post-transition DTV facilities. We believe it is unnecessary and unfair to require these already-operational facilities to reduce service. Indeed, as these stations are already providing service at the requested parameters, it is in the public interest to allow them to continue to do so. In addition, none of the stations receiving the interference filed an opposition to the station requesting the change.

48. Following is a brief discussion of the stations requesting changes to reflect their operating facilities and the relevant circumstances that support our grant of their requests:

49. KTBN, Santa Ana, CA. Trinity Christian Center of Santa Ana, Inc. ("Trinity"), licensee of station KTBN-TV, channel 40, and KTBN-DT, channel 23, Santa Ana, CA, received channel 23 for its TCD in the proposed DTV Table.¹¹¹ Trinity requests that the parameters for KTBN in the proposed DTV Table Appendix B be changed to reflect those of the facility currently licensed in BLCDT-20050729AFT.¹¹² The Commission's interference analysis shows that KTBN's licensed facility causes 0.75 percent interference to KBEH, Oxnard, California (analog channel 63, digital channel 24 for both pre- and post-transition).¹¹³

¹⁰⁸ See, e.g., WICS, Springfield, Illinois (application granted July 26, 2005); WKDH, Houston, Mississippi (application granted June 5, 2006); WTEN, Albany, New York (application granted Aug. 2005); WUTV, Buffalo, NY (application for modification of CP to resolve international coordination issue granted June 27, 2005). These applications were analyzed using the 2 percent new interference standard applied to applications for pre-transition operations, see 47 C.F.R. § 73.623(c)(2), rather than the 0.1 percent new interference standard applied during the channel election process for post-transition operations.

¹⁰⁹ See, e.g., WLMB, Toledo, OH; KOCE, Huntington Beach, CA; and WLLA, Kalamazoo, MI. For KTBN, Santa Ana, CA we are changing the certification to correct the station's mistake in citing the incorrect application on its Form 381 certification. In addition, cumulative changes to station parameters made over the course of establishing the final DTV Table may also affect the level of interference caused to other stations.

¹¹⁰ The Commission may waive its rules when good cause is demonstrated. 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972).

¹¹¹ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹¹² See Comments of Trinity Christian Center of Santa Ana, Inc., filed Jan. 10, 2007, at 3.

¹¹³ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A. This commenter also states that the licensee has a pending Petition for Rulemaking to operate on Channel 33 and requests that the parameters specified in that petition ultimately be allotted to this station. *Id.* As discussed further in Section III.F.2., *infra*, requests to conform DTV (continued....)

50. WICS, Springfield, IL. WICS Licensee, LLC ("WICS Licensee"), licensee of station WICS, channel 20, and WICS-DT, channel 42, Springfield, IL, received channel 42 for its TCD in the proposed DTV Table.¹¹⁴ Sinclair Broadcast Group, Inc. ("Sinclair"), the parent company of WICS Licensee, requests that the parameters for WICS in the DTV Table Appendix B be changed to reflect those of the licensed facility BLCDDT-20050627AAI.¹¹⁵ The Commission's interference analysis shows that the WICS licensed facility causes 0.43 percent interference to WICD, Champaign, Illinois (analog 15, post-transition digital channel 41).

51. WUTV, Buffalo, NY. WUTV Licensee, LLC ("WUTV Licensee"), licensee of station WUTV, channel 29, and permittee of WUTV-DT, channel 14, Buffalo, NY, received channel 14 for its TCD in the proposed DTV Table.¹¹⁶ Sinclair Broadcast Group Inc., parent company of WUTV Licensee, requests that the parameters for WUTV in the DTV Table Appendix B be changed to reflect those of the licensed facility BLCDDT-20060829BGK.¹¹⁷ The Commission's interference analysis shows that the WUTV licensed facility causes 8.45 percent interference to the TCD on Channel 14 of a new analog singleton in Bath, New York (call sign 870331LW).¹¹⁸ We note that, in its license application, WUTV indicated it would employ antenna beam tilting to protect the Bath station from interference and that the WUTV license specifies beam tilting.¹¹⁹

52. WKDH, Houston, MS. Southern Broadcasting Inc. ("Southern"), licensee of singleton station WKDH, channel 45, Houston, MS, received channel 45 for its TCD in the proposed DTV Table.¹²⁰ Southern requests that the parameters for WKDH in the DTV Table Appendix B be changed to reflect the parameters specified in its construction permit BPCDDT-20060519ABE.¹²¹ WKDH is now operating pursuant to program test authority. The Commission's interference analysis shows that WKDH causes 0.34 percent interference to WPXH, Gadsden, Alabama (analog channel 44, digital channel 45 for both pre- and post-transition).¹²²

53. WTEN, Albany, NY. Young Broadcasting, Inc. ("Young"), licensee of station WTEN, (Continued from previous page) _____
Appendix B to facilities that are not yet authorized are premature. If the pending Petition for Rulemaking is granted, KTBN can apply at that time for authority to operate on Channel 33.

¹¹⁴ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹¹⁵ See Comments of Sinclair Broadcast Group, Inc. ("Sinclair"), filed Jan. 25, 2007, at 1 and Exhibit 1.

¹¹⁶ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹¹⁷ See Sinclair Comments at 1 and Exhibit 1.

¹¹⁸ See FCC File No. BPCT - 19870331LW, (granted Apr. 23, 2004). This station's analog facility is not yet constructed.

¹¹⁹ See FCC File No. BLCDDT - 20060829BGK (granted Nov. 20, 2006). We also note that the level of interference predicted to be caused by co channel digital-digital operation often exceeds the interference predicted for co-channel analog-digital operation. Thus, while WUTV-DT's pre-transition operation on channel 14 was subject to the 2 percent new interference standard of 47 C.F.R. § 73.623(c)(2) vis a vis the Bath station's proposed analog facility on channel 14, the level of predicted interference caused by WUTV to Bath's co channel digital operation is more than 8 percent. As WUTV elected to stay on its current DTV channel for post-transition operation, its operation on that channel was not subject to interference analysis. See *supra* ¶ 16.

¹²⁰ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹²¹ See Comments of Southern Broadcasting, Inc. ("Southern"), filed Jan. 25, 2007, at 2-3 and attachment C. Southern also filed a late comment stating its belief that WKDH's antenna identification and orientation were also incorrect in Appendix B. See Comments of Southern Broadcasting, Inc., filed Mar. 16, 2007. The request to base all of WKDH's Appendix B parameters on its authorized and operating DTV facilities is granted.

¹²² See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

channel 10, and WTEN-DT, channel 26, Albany, NY, received channel 26 for its TCD in the proposed DTV Table.¹²³ Young requests that the parameters for WTEN in the DTV Table Appendix B be changed to reflect the parameters of the station's license BLCDDT-20060104ACC.¹²⁴ The Commission's interference analysis shows that the WTEN licensed facility causes 3.24 percent interference to WHPX, New London, Connecticut (analog channel 26, post-transition digital channel 26) and 1.39 percent interference to WFXV, Utica, New York, (analog channel 33, digital channel 27 for both pre- and post-transition).¹²⁵

54. WLMB, Toledo, OH. Dominion Broadcasting, Inc., ("Dominion"), licensee of station WLMB, channel 40, and WLMB-DT, channel 5, Toledo, OH, received channel 5 for its TCD in the proposed DTV Table.¹²⁶ Dominion requests that the parameters for WLMB in the DTV Table Appendix B be changed to reflect those of the licensed facility BLCDDT-20050201AAF.¹²⁷ Dominion failed to timely file a certification on FCC Form 381 for WLMB specifying whether it would construct replication or maximization facilities, and consequently WLMB was assigned replication facilities in the proposed DTV Table Appendix B.¹²⁸ The Commission noted that forty-one stations, including WLMB, did not timely file a certification form, and stated that it would permit these licensees to file comments proposing a change to their certification to specify maximized facilities for which they would have been allowed to certify.¹²⁹ Dominion requests that its certification for WLMB be modified to specify the maximized facilities that Dominion has now constructed and that the Commission has licensed.¹³⁰ The Commission's interference analysis shows that the WLMB licensed facility causes 2.04 percent interference to WGVK, Kalamazoo, Michigan (analog channel 52, digital channel 5 for both pre- and post-transition).¹³¹

55. KOCE, Huntington Beach, CA. KOCE-TV Foundation ("KOCE Foundation"), licensee of noncommercial educational station KOCE, channel *50-, and KOCE-DT, channel *48, Huntington Beach, CA, received channel *48 for its TCD in the proposed DTV Table.¹³² KOCE Foundation requests that the parameters for KOCE in the proposed DTV Table Appendix B be changed to reflect those of the licensed facility BLEDDT-20041117ADG.¹³³ KOCE Foundation failed to timely file a certification on FCC Form 381 for KOCE specifying whether it would construct replication or maximization facilities, and consequently KOCE was assigned replication facilities in the proposed DTV Table Appendix B.¹³⁴ This situation is similar to WLMB, paragraph 54, *supra*. The Commission noted that KOCE also did not timely file a certification form and stated that it would permit this licensee to file comments proposing a

¹²³ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹²⁴ See Comments of Young Broadcasting, Inc., filed Jan. 25, 2007, at 1.

¹²⁵ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹²⁶ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹²⁷ See Comments of Dominion Broadcasting, Inc. ("Dominion"), filed Jan. 9, 2006, at 2.

¹²⁸ Certifications were due to be filed by November 5, 2004. See, *supra*, ¶ 8 and note 12.

¹²⁹ *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶ 28 and n. 60 (A request was filed on behalf of WLMB(TV) that we waive the freeze and filing deadlines to accept their untimely maximization certification).

¹³⁰ See Comments of Dominion at 2.

¹³¹ We note that, for purposes of calculating interference for pre-transition operations, the FCC employed rounding such that interference of 2.04 percent would have been rounded down to 2 percent.

¹³² See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹³³ See Comments of KOCE-TV Foundation, filed Jan. 25, 2007, at 2.

¹³⁴ Certifications were due to be filed by November 5, 2004. See, *supra*, ¶ 8 and note 12.

change to its certification to specify maximized facilities for which it would have been allowed to certify.¹³⁵ KOCE Foundation requests that its certification for KOCE be modified to specify KOCE-DT's licensed, maximized facilities.¹³⁶ The Commission's interference analysis shows that the KOCE licensed facility causes 0.24 percent new interference to KAZA, Avalon, CA (analog channel 54, digital channel 47 for both pre- and post-transition).

56. WLLA, Kalamazoo, MI. Christian Faith Broadcast, Inc. ("Christian Faith"), licensee of station WLLA, channel 64, and WLLA-DT, channel 45, Kalamazoo, MI, received channel 45 for its TCD in the proposed DTV Table.¹³⁷ Christian Faith failed to timely file a certification on FCC Form 381 for this station.¹³⁸ Stations that did not file certifications were assigned replication facilities for purposes of the Commission's channel election process and interference evaluation.¹³⁹ On October 31, 2005, Christian Faith filed a request for acceptance of a late-filed certification on behalf of WLLA specifying maximization facilities authorized for that station.¹⁴⁰ The proposed DTV Table Appendix B did not reflect this requested certification change.¹⁴¹ Christian Faith subsequently filed comments in response to the *Seventh Further Notice* requesting a change in the proposed DTV Table to reflect its construction permit for maximized facilities for this station.¹⁴² On May 29, 2007, Christian Faith filed a license application for WLLA for these maximized facilities.¹⁴³ The authorized and operating maximized facilities of WLLA cause 2.11 percent new interference to WZPX, Battle Creek, Michigan (analog channel 43, digital channel 44 for both pre- and post-transition) and 0.79 percent new interference to WDIV, Detroit, Michigan (analog channel 4, digital channel 45 for both pre- and post-transition).

57. For the reasons discussed in paragraph 47, *supra*, we hereby grant the changes requested for these eight stations and these changes are reflected in the DTV Table Appendix B adopted herein.

3. Requests By Non-Operational Stations That Do Not Meet Interference Criteria

58. Comments were filed on behalf of two stations requesting changes to the proposed DTV

¹³⁵ *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶ 28 and n. 60 (A request was filed on behalf of KOCE-TV that we waive the freeze and filing deadlines to accept their untimely maximization certification).

¹³⁶ See Comments of KOCE-TV Foundation at 3..

¹³⁷ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Supplement to Petition to Accept Late-Filed FCC Form 381 of Christian Faith Broadcast, Inc., filed Oct. 31, 2005, at 7.

¹⁴¹ On March 3, 2006, the Video Division of the FCC's Media Bureau issued a letter granting "limited relief" to Christian Faith for WLLA. See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Christian Faith Broadcast, Inc., c/o Joseph M. Di Scipio, DA 06-519. Specifically, the Commission agreed to permit WLLA to construct authorized maximized facilities and agreed to protect those facilities "to the extent that they do not create interference to stations that have received DTV channel designations in rounds 1 and 2 of the DTV election process." The Commission subsequently determined, however, that the maximization facilities specified by Christian Faith for WLLA exceeded the maximum permissible interference of 0.1 percent to DTV facilities elected in rounds 1 and 2. Accordingly, in the *Seventh Further Notice*, the Commission specified replication facilities in the proposed DTV Table Appendix B for WLLA.

¹⁴² See Comments of Christian Faith Broadcast, Inc., filed Jan. 25, 2007.

¹⁴³ See FCC File No. BLCDDT-20070529AEA. On May 29, 2007, Christian Faith also requested that the Commission waive the 0.1 percent interference limit for WLLA. See Joseph M. Di Scipio *ex parte* (dated May 29, 2007) at 2.

Table Appendix B to reflect authorized facilities where we have determined that the interference caused to another licensee's existing TCD exceeds the 0.1 percent interference standard, there is no interference agreement with the affected station(s), and the station requesting the change is not operational.¹⁴⁴ One of these stations, WTCV, San Juan, PR, has not met its burden to demonstrate that special circumstances justify a waiver, and we therefore deny its request to change DTV Table Appendix B. Unlike the stations discussed in Section III.C.2, *supra*, this station has not completed construction and begun DTV service to the public. We do not believe it is appropriate to change the facilities specified in DTV Table Appendix B where the station requesting the change does not meet the applicable interference standard and is not yet providing service to the public. We note that this station could apply in the future for a modification to specify maximized facilities. Any such application would be subject to interference criteria and other standards adopted in the Third DTV Periodic Review Report and Order. As discussed further below, for one station, WMFD, Mansfield, Ohio, we will grant the request to change DTV Table Appendix B because this station has obtained international coordination for its authorized facility.

59. WTCV, San Juan, PR. International Broadcasting Corporation ("IBC"), licensee of station WTCV, channel 18, and WTCV-DT, channel 32, San Juan, PR, received channel 32 for its TCD in the proposed DTV Table.¹⁴⁵ IBC states in its comments that it originally intended to operate its post-transition DTV transmitter from its current analog tower but was forced to change sites because of difficulties in obtaining tower space at its original site for its digital facilities.¹⁴⁶ According to IBC, after lengthy negotiations with the tower site owner, Puerto Rico Telephone Company, "it became clear that the tower structural requirements imposed at the time made the project economically unfeasible."¹⁴⁷ IBC therefore certified to an authorized construction permit for a different site with substantially reduced facilities. In its comments IBC states that it has recently solved the difficulties of obtaining tower space to operate from its currently authorized analog site and has filed an application for a construction permit to operate from this site.¹⁴⁸ This application was pending at the time IBC filed its comments in response to the *Seventh Further Notice* but has now been granted.¹⁴⁹ IBC requests a change in the proposed DTV Table Appendix B to specify the parameters of the construction permit application that was pending at the time IBC's comments were filed and that has now been granted. IBC states that the proposed change in site and technical facilities will enable WTCV to serve an additional 318,230 viewers. However, the WTCV facilities requested by IBC would cause 1.49 percent new interference to WSJU-TV, San Juan, Puerto Rico (analog channel 30, post-transition digital channel 31) and WTCV is not currently operational. As the facilities requested by IBC would cause new interference in excess of the 0.1 percent interference standard and the station is not yet providing service to the public, we will deny IBC's request to change DTV Table Appendix B.

60. WMFD, Mansfield, OH. Mid-State Television, Inc., ("Mid-State"), licensee of station WMFD-TV, channel 68 and WMFD-DT, channel 12, Mansfield, OH, received channel 12 for its TCD in the proposed DTV Table.¹⁵⁰ Mid-State certified to a then-pending maximization application that had not

¹⁴⁴ In addition, WGGN, Sandusky, OH, initially requested a change that would exceed the 0.1 percent interference standard. On July 10, 2007, WGGN submitted *ex parte* comments modifying its original request for increased power so that it will not exceed the 0.1 percent interference standard. See Christian Faith Broadcast, Inc. *ex parte* (dated July 10, 2007) at 2. See *supra* Section III.C.1., discussion of requests that meet the interference criteria.

¹⁴⁵ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹⁴⁶ See Comments of International Broadcasting Corporation, filed Jan. 25, 2007, at 3.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 4.

¹⁴⁹ See FCC File No. BPCDT - 20070125AAX (granted Feb. 21, 2007).

¹⁵⁰ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

yet been authorized due to international coordination issues. Mid-State states that, when it filed its pre-election certification, it indicated that it intended to operate with the facilities specified in the then-pending modification application, but that the application remained subject to international coordination.¹⁵¹ After certification, the application was amended to resolve the international coordination issues and subsequently was granted in July 2005.¹⁵² The proposed DTV Table Appendix B specifies the facilities to which Mid-State certified. Mid-State requests that DTV Table Appendix B be changed to reflect the facilities specified in its July 2005 construction permit. The facilities requested by Mid-State would cause 1.13 percent interference to WINM, Angola, Indiana (analog channel 63, post-transition digital channel 12) and 0.44 percent interference to WBOY, Clarksburg, West Virginia (analog channel 12, post-transition digital channel 12). Neither of the affected stations filed comments opposing WMFD's proposed change to Appendix B.

61. We will grant Mid-State's request and change DTV Table Appendix B accordingly. This change is reflected in the DTV Table Appendix B attached hereto. The change requested by Mid-State is the result of a negotiated solution with Canada to resolve international coordination issues that prohibit operation of the facility proposed in the application pending at the time of certification and to which Mid-State certified on FCC Form 381.¹⁵³ The Commission has recognized that stations facing international coordination issues face unique challenges in completing the digital transition.¹⁵⁴ As the result of a modification to a Canadian DTV allotment, WMFD states that it is precluded from constructing the facilities listed in the proposed DTV Table Appendix B. If we were to deny the change requested by Mid-State, WMFD would be required to identify a new facility and re-commence the process of obtaining international coordination for that facility. Because of the unique circumstances faced by WMFD, a station that is already providing digital service to the public and seeks to improve that service, we believe that grant of the requested change to DTV Table Appendix B is warranted and will serve the public interest.

D. Requests for Modified Coverage Area

62. We will grant requests filed on behalf of 30 stations whose post-transition DTV channel is different from their pre-transition DTV channel to change the coverage area in the proposed DTV Table Appendix B. In general, these commenters argue that the facilities specified in the proposed DTV Table Appendix B do not permit the station to provide service to the area served by the station's analog facility.¹⁵⁵

63. In the creation of the initial Table of Allotments, DTV channels were chosen to allow service on the channel to best match the Grade B service contour of the analog station with which it was paired.¹⁵⁶ Implementation of this replication goal requires a combination of transmitter site, ERP, directional antenna characteristics, and antenna height that is adequate to cover at least the same area as was served by the analog station. In the *Sixth Report and Order* in this docket, however, the Commission

¹⁵¹ See Comments of Mid State Television, Inc., filed Jan. 19, 2007, at 3.

¹⁵² See FCC File No. BPCDT-20040526ABT (granted July 15, 2005).

¹⁵³ The Commission must obtain concurrence by the Canadian government for any proposed allotments located within 400 kilometers of the U.S.-Canadian border, and by the Mexican government for any proposed allotments located within 275 kilometers of the U.S.-Mexican border. See *Seventh Further Notice*, 21 FCC Rcd at 12117, ¶ 48.

¹⁵⁴ See, e.g., *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18310, ¶ 71 and 18295, ¶ 39.

¹⁵⁵ The Commission determined replication coverage based on the service provided by the station's DTV facilities established in Appendix B of the 1998 *Second MO&O*, *supra* note 5. See also *Second DTV Periodic Report and Order*, 18314-18315, ¶ 78; Instructions to FCC Form 381, Item 1(c).

¹⁵⁶ See *Sixth Report and Order*, 12 FCC Rcd at 14605, ¶¶ 29-30.

determined that the maximum permissible power for all allotments in the initial DTV Table would be 1000 kW.¹⁵⁷ For some stations whose analog channel was in the VHF band and whose initial DTV channel was in the UHF band, an ERP of 1000 kW was not sufficient to permit replication of the station's analog service.¹⁵⁸

64. On FCC Form 381, the Commission permitted stations the choice of certifying to operate their post-transition DTV station based on: 1) a current station authorization; 2) a pending application for maximization that had not been authorized due to a pending international coordination issue;¹⁵⁹ or 3) replication facilities.¹⁶⁰ Stations certifying to replication facilities that had not changed their DTV channel since the 1998 DTV *Second MO&O* had their replication facilities based on the facilities established in Appendix B of the *Second MO&O*.¹⁶¹

65. Several commenters argue that, because of the 1000 kW maximum imposed in the *Sixth Report and Order*, the Commission's decision to base replication during the channel election process on the station's initial DTV facilities established in the *Second MO&O* rather than the station's analog facilities resulted in the Commission proposing parameters in the DTV Table Appendix B that do not permit the station to replicate the analog service area.¹⁶² In other cases, stations filed comments requesting a change to the parameters in the proposed DTV Table Appendix B to modify the station's coverage area to permit replication of the station's analog coverage area where the station was not subject to the 1000 kW maximum imposed in the *Sixth Report and Order*. These stations, returning to their analog channel for post-transition operations, commented that the proposed DTV Table Appendix B facilities would not permit replication of the station's analog Grade B contour.¹⁶³ For stations returning to their analog channel, this discrepancy between the proposed Appendix B parameters and the analog coverage area may have been due to translation discrepancies that occurred over a series of engineering

¹⁵⁷ See *Sixth Report and Order*, 12 FCC Rcd at 14605, ¶ 30.

¹⁵⁸ In recognition of this problem, the Commission adopted a note to Section 73.622(e)(2) of its rules, which protects stations with a UHF DTV channel in the initial DTV Table whose assigned power is 1000 kW by defining the station's protected DTV service area as the Grade B contour of the associated analog television station. The note to that provision provides:

NOTE TO PARAGRAPH (e)(2): During the transition, in cases where the assigned power of a UHF DTV station in the initial DTV Table is 1000 kW, the Grade B contour of the associated analog television station, as authorized on April 3, 1997, shall be used instead of the noise-limited contour of the DTV Station in determining the DTV station's service area. In such cases, the DTV service area is the geographic area within the station's analog Grade B contour where its DTV signal strength is predicted to exceed the noise-limited service level, i.e., 41 dB, as determined using the Longley-Rice methodology.

47 C.F.R. § 73.622(e)(2).

¹⁵⁹ See *Second DTV Periodic Report and Order*, 18314-18315, ¶ 78; Instructions to FCC Form 381, Item 1(c).

¹⁶⁰ Eligible licensees and permittees without a DTV channel allotment were permitted to certify that they would operate their post-transition DTV station based on a currently authorized NTSC license or construction permit. See FCC Form 381, item 1(d).

¹⁶¹ See Instructions to FCC Form 381, Item 1(c). The Commission indicated that stations that had changed their DTV channel since the DTV *Second MO&O* would have their replication facilities based on the facilities established by the relevant Report and Order for that station. *Second DTV Periodic Report and Order*, 18314-18315, ¶ 78

¹⁶² See, e.g., Comments of Hoak Media, LLC, filed Jan. 25, 2007, at 3-7 (KMOT, Minot, ND; KHAS, Hastings, NE; KNOP, North Platte, NE); Comments of Walt Disney Company, filed Jan. 25, 2007 (WPVI, Philadelphia, PA).

¹⁶³ See, e.g., Comments of Tanana Valley Television Company, filed Jan. 22, 2007 (KFXF, Fairbanks, AK); Comments of the University of Alaska, filed Jan. 18, 2007 (KUAC, Fairbanks, AK); Comments of Georgia Public Telecommunications Commission, filed Jan. 25, 2007 (WVAN, Savannah, GA).

calculations used to determine replication.¹⁶⁴ In other cases, stations simply requested an increase in power or a change to the station's antenna pattern to permit the station to serve more of the area served by the station's analog facilities.¹⁶⁵

66. In response to the comments filed on behalf of these stations, we have recalculated Appendix B facilities based on replicating the analog coverage that was used to determine their initial DTV table facilities. If the recalculation would result in a reduction in the Appendix B facilities, we are adopting herein the larger Appendix B facilities that we had initially proposed in the *Seventh Further Notice*.¹⁶⁶ If the recalculation would result in a larger coverage area and our analysis indicates that the recalculated facilities (1) meet the 0.1 percent interference standard specified in the *Second DTV Periodic Report and Order* or (2) would cause more than 0.1 percent new interference but the affected station(s) agree to accept the interference,¹⁶⁷ we are granting the request to change DTV Appendix B to reflect the larger coverage area. These stations are listed in Appendix D3 and the revised parameters for these stations are reflected in the revised DTV Table Appendix B, *infra*. There were no comments filed opposing these requested changes.

67. We believe that permitting these changes to the proposed DTV Table is consistent with our overall goal in the DTV transition of encouraging replication of analog service.¹⁶⁸ One of the Commission's objectives throughout the transition has been to permit broadcasters to reach with digital service the audiences they have been serving with analog service so that viewers will continue to have access to the stations that they are accustomed to receiving over the air.¹⁶⁹ We believe that the revisions requested by the stations listed in Appendix D3 will serve the public interest by permitting those stations to provide digital service to more of their established analog viewers.

68. In addition, three stations requested changes to the proposed DTV Table Appendix B to increase the station's coverage area, but our recalculations of the Appendix B facilities and the subsequent interference analysis show that the requested change would result in interference that would exceed the 0.1 percent interference standard adopted in the *Second DTV Periodic Report and Order* and the affected

¹⁶⁴ Some of the discrepancies may have been due to the use of different propagation models for determining analog TV contours (F(50, 50) curves) and DTV contours (F(50, 90) curves). The variations may be enlarged when calculated facilities are in a different frequency band (low VHF, high VHF, or UHF) than the facility that is being replicated.

¹⁶⁵ See, e.g., Comments of Red River Broadcast Co., LLC, filed Jan. 25, 2007 (KJRR, Jamestown, ND) (requesting modification of the azimuth pattern to a directional pattern more suited for a VHF frequency); Comments of BlueStone License Holdings Inc., filed Jan. 25, 2007 (KTVM, Butte, MT; KCFW, Kalispell, MT; and KECI, Missoula, MT; WCYB, Bristol, VA) (arguing that these stations were allotted very low power in the proposed DTV Table Appendix B).

¹⁶⁶ The stations whose Appendix B facilities are not being changed are: KBRR, Thief River Falls, MN; KNRR, Pembina, ND; KRCR, Redding, CA; KXFX, Fairbanks, AK; WGAL, Lancaster, PA; and WMAE, Booneville, MS.

¹⁶⁷ With respect to WVAN, Savannah, GA, our interference analysis shows that the changes proposed for that station would cause 0.21 percent new interference to WXGA, Waycross, GA. However, WXGA has agreed to accept this interference. See Georgia Public Telecommunications Commission *ex parte* (dated June 20, 2007); see also, Comments of Georgia Public Telecommunications Commission, filed Jan. 25, 2007 regarding WVAN, Savannah, GA.

¹⁶⁸ We note that WSTE, Ponce, PR (analog channel 7, pre-transition digital channel 8, post-transition digital channel 7) currently employs boosters to broadcast their analog signal throughout their coverage area. See Comments of Siete Grande Television, Inc. (filed Jan. 25, 2007). We are revising WSTE's parameters in Appendix B so that the station can replicate its analog coverage, and the Bureau is instructed to process, and grant as appropriate, the applications that will permit WSTE to continue serving its coverage area with its digital signal.

¹⁶⁹ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311, ¶ 72.